

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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KANAWHA COUNTY CLERK'S OFFICE
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JANE DOE,

Plaintiff,

v.

Civil Action No. 19-C-1168
Judge Bailey

WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES and
UNKNOWN DHHR SUPERVISOR(S),

Defendants.

COMPLAINT

Plaintiff Jane Doe,¹ by counsel, alleges the following against Defendant West Virginia Department of Health and Human Resources (“DHHR”) and Defendant Unknown DHHR Supervisor(s):

Parties, Jurisdiction & Venue:

1. Plaintiff was and is at all times relevant herein a citizen and resident of West Virginia.
2. Defendant DHHR is a West Virginia entity and citizen for which venue exists in Kanawha County. *See W.Va. Code §§ 56-1-1; 14-2-2(a).* Defendant DHHR is the state agency that is statutorily mandated to provide Child Protective Services to the children in West Virginia, which during the relevant time, included Plaintiff.
3. The individual Defendant(s) described above as “Unknown DHHR Supervisor(s)” are supervisors who were employed by DHHR in West Virginia during the relevant period of time and made the decisions at issue that are discussed below. Plaintiff attempted to learn their identities through the collection of records. However, counsel’s attempts have been

¹Given the sensitive nature of the sexual abuse of a minor described herein, counsel uses the pseudonym, Jane Doe, to describe the Plaintiff. The identity of the Plaintiff is known to the Defendants by virtue of the pre-suit Notice previously sent to DHHR.

stymied by DHHR's failure to produce all relevant records. The individuals Defendants described above as "Unknown DHHR Supervisors" are likely West Virginia citizens and residents.

4. Plaintiff served notice on Defendant DHHR in compliance with *W.Va. Code § 55-17-3* more than 30 days prior to the filing of this action.
5. This Complaint seeks to recover damages up to the limits of liability of any applicable insurance policy.

Additional Factual Allegations:

6. Plaintiff was born in December of 1998.
7. Plaintiff lived with her mother until she was 11 years old when as a result of abuse and neglect by her mother, Defendant DHHR removed Plaintiff from her mother's custody.
8. Defendant DHHR placed Plaintiff in foster care in Wayne County, West Virginia.
9. After being in multiple foster placements, Plaintiff learned the identity of her biological father and they met for the first time (as Plaintiff remembers it) in 2010 when Plaintiff's maternal grandmother brought him along on a visit. Prior to this time, Plaintiff believed her biological father to be her mother's husband, but when her mother divorced, she learned that her biological father was different than that of her sisters.

Defendants never should have placed Plaintiff with her biological father.

10. Unbeknownst to the then 11 year-old (and 5th grade) Plaintiff at the time, her biological father had a history of abuse. Previously, he was arrested by the Huntington Police Department on March 16, 2004 and charged with Domestic Battery, of which he later served one month in jail and six months on probation.

11. According to a discharge summary, Plaintiff “was in foster care and DHHR looking for alternative placements. . . . The patient’s father was in to visit [in 2010] when asked if the patient would possibly like to live with her father the patient said she would kill herself if she had to live with her father.” (Highland 14 of 125).
12. On July 15, 2010, Plaintiff was “discharged to DHHR.” (*Id.*).
13. DHHR’s “Foster Care Policy” provides:

“2.4.2 Kinship/Relative Placement and Relative Foster/Adoptive Family

Relatives may not be approved as a placement resource until Department staff, or comparable agency staff in another state via ICPC, has assessed the relatives’ability to provide for the care and safety of the child. If Department staff, or comparable agency staff in another state via ICPC, finds that the relative can meet the certification requirements for becoming a foster/adoptive family, the relative may become certified as a foster/adoptive caretaker and receive boarding care each month. According to federal requirements, all relative caretakers who wish to become certified foster/adoptive parents must meet the same certification standards as non-related foster/adoptive parents, however, waivers for non-safety standards may be granted.”

(2 0 1 8 e d i t i o n i s a v a i l a b l e a t :
<https://dhhr.wv.gov/HealthCheck/fostercare/Documents/Foster%20Care%20Policy%20Chafee%20Updates%206-1-18.pdf>).²

14. On August 21, 2010, Defendants improperly and recklessly placed the then 11 year-old Plaintiff in the custody of her biological father, who had a history as a perpetrator of abuse. (Her sisters were placed in the custody of other adults and did not reside with them.)

²The policy in place during the relevant period of time was the same or substantially similar as this 2018 edition of the policy posted online and the 2012 edition.

15. By August 21, 2010, Defendant DHHR placed Plaintiff in the custody of her biological father, and Plaintiff's biological father got full custody on October 1, 2010. (Prestera Records at 9 of 51).
16. A Prestera record, dated October 19, 2010 documents: "Boundary issues with father."
17. Within months after she moved in, her biological father began to rape and otherwise sexually abuse Plaintiff.
18. In November 2010, Plaintiff became pregnant as a result of sexual intercourse with her biological father, although the pregnancy was not confirmed until early 2011.

Defendants failed to properly investigate and remove the 11-12 year-old Plaintiff from the dangerous and horrific situation in which it placed her.

19. Prestera Center Medical Services Note, dated December 20, 2010, document the following:
 - Plaintiff is "now having conflict with father."
 - "Dad acting bizarre today, asking to be put in the nut-house, asking if he can get any medications for himself."
 - Plaintiff's biological father "continues to have difficulty knowing how to effectively parent an eleven year old girl with mental health issues. He admits his own issues interfering with this. Explored his family background that contributes to this including a history of being physically abused and a father who is in prison for child molestation charges."
20. A Prestera record, dated January 19, 2011, again documents "having conflict with father."
21. On January 28, 2011, Plaintiff's biological father was arrested by the Barboursville Police Department and charged with Domestic Battery.

Michael Hester

22. Section 3.15 of DHHR's Child Protective Services Policy provides, in part, that "[w]hen there is reason to suspect that a child has been abused or neglected or is subject to conditions that are likely to result in abuse or neglect, as a result of domestic violence occurring between the adults in the home a report should be made to CPS." (<http://dhhr.wv.gov/bcf/policy/Documents/Child%20Protective%20Services%20Policy.pdf>).³ This policy underscores DHHR's recognition that domestic abuse among spouses is a condition likely to lead to abuse or neglect of a minor child.
23. By February 1, 2011, Plaintiff's biological father had been "released and is back home." (Prestera SIBC). Plaintiff and her biological father were staying with each other overnight after her biological father obtained permission for this arrangement. (*Id.*). The record continues, "they are supposed to stay at step mom's grandmother until court b/c cop had filed domestic charges on her dad. She [Plaintiff] did say that [he] did get permission for her to stay with him tonight. . . [Plaintiff] is going to stay with dad overnight[.]" (*Id.*).
24. At that time, Defendants did not have Plaintiff removed from the home, despite the Domestic Battery charges and the well-documented issues existing between Plaintiff and her biological father.
25. A Prestera record, dated February 18, 2011, documents: "Continues to have conflict with father." (Prestera Medical Services Note).
26. A Prestera Family Report, dated February 22, 2011, states:
"Bloodwork completed yesterday revealed that . . . [Plaintiff] is pregnant. Ultrasound completed at emergency room indicates . . . [Plaintiff] is likely at

³The latest edition of the CPS Policy, which was revised in December of 2018, is available online at the above website. The policy in place during the relevant period of time was presumably the same or substantially similar as this 2018 edition.

14-15 weeks gestation." The report continues: "Parents are upset and father does not wish her to continue pregnancy. [Biological father] . . . indicated due to his own anger management issues, he does not believe he can handle the stress her carrying to term would create. He stated if she has the baby, she cannot remain his custody for this reason. He is willing to leave and sign his rights over to . . . [stepmother]. However, [stepmother] . . . is uncertain if she can handle the situation and she shared her own personal issues related to abortion and how . . . [Plaintiff's] pregnancy affects her personally [...] [Plaintiff] claims she snuck out of the house and met up with a boy in the neighborhood and had sex with him. She states she knew this individual from the skating rink. She indicated she will terminate the pregnancy if that is what her father wants."

Id.

27. Later, on February 22, 2011, while her biological father was not present, Plaintiff confided in her stepmother that Plaintiff's biological father was the one who impregnated her.
28. The stepmother called Plaintiff's therapist/counselor at Prestera, Mary Hendershot and reported what Plaintiff had said to her. (State Police Records 17 of 181).
29. Ms. Hendershot advised that she would have to convey this information to CPS, or in other words, Defendant. (*Id.*).
30. DHHR's records from February 22, 2011 indicate that DHHR received a call that evening conveying the information that Plaintiff stated her biological father had impregnated her and otherwise graphically detailed facts surrounding the sexual assault.
31. The DHHR employee receiving the report "[a]tttempted to call Supervisor for advice on what to tell reporter or what actions to take. No answer, no call back." (DHHR Client Contact Report 2-22-11). Five minutes later on the evening of February 22, 2011, an unnamed DHHR supervisor was called "on pager to see if any actions needed to be taken tonight concerning" Plaintiff's home. (*Id.*).

32. A Progress Summary letter by Plaintiff's therapist written months later documents the events of February 22, 2011, inasmuch as it states that the stepmother called the counselor at Prestera and told her that Plaintiff said Plaintiff's biological father

"was the father of her child. [Stepmother] . . . put the Prestera therapist on speaker phone to discuss with her . . . [father, and Plaintiff]. With her father present, . . . [Plaintiff] admitted she had made these allegations; however, at that time she said this was not true. This therapist called the [DHHR] worker of the day and questioned how to proceed. She advised that since [Plaintiff] . . . had recanted, she could remain in the home that evening with [the stepmother's] . . . supervision. Family was advised of this. Both . . . [the biological father and stepmother] expressed concern about . . . [Plaintiff] remaining in their home and were considering having her removed."

(4/28/2011 Progress Summary letter - Mary Hendershot Prestera).

33. Remarkably, Defendant DHHR's worker apparently wholly accepted Plaintiff's unlikely recantation in the presence of her rapist-biological father and discounted the Plaintiff's earlier statement made outside the presence of her rapist-biological father.
34. Rather than taking Plaintiff out of the situation entirely at this point, Defendants improperly and recklessly left Plaintiff in the custody of her stepmother, whose allegiance was plainly to the biological father, not Plaintiff, whom she despised.
35. Therefore, the stepmother was Plaintiff's caretaker from February 22, 2011 through late March 2011.
36. The stepmother and Plaintiff had been repeatedly at odds from the time she moved into the residence in 2010 and continuing until this time in 2011, and this tension is well-documented in the notes and various records gathered thus far in this case.
37. On February 23, 2011, in an individual therapy session, Plaintiff explained "Daddy got me pregnant", and she gave detailed information regarding her allegations. (4/28/2011 Progress

Summary letter - Hendershot/Prestera). Plaintiff said she later recanted because, "I didn't want my daddy to go to jail." (*Id.*).

38. DHHR's records indicate that Prestera's therapist advised DHHR as follows on February 23, 2011: "Mary states they are sounding more guilty and hiding more as the day goes on." (DHHR Client Contact Reports - 2-23-11). DHHR failed to give this statement from the Prestera therapist the weight it deserved.
39. During a phone call on February 23, 2011, DHHR personnel determined to wait another day to conduct the interview of Plaintiff at the school as opposed to doing it that day at the residence "for the safety of the child and because of an uncertain reaction from family."
40. On February 24, 2011, DHHR conducted a brief forensic interview of Plaintiff in the DHHR office. During this interview, Plaintiff said the person who impregnated her was "an unknown boy in the area." (DHHR Client Contact Reports - 2-24-11). Another DHHR note from that day stated "she reported an older boy in the neighborhood took her up behind a building[.]" (*Id.*). This obviously differed from when she stated it was a boy from the skating rink.
41. After the forensic interview on February 24, 2011, the subsequent meetings DHHR personnel had with Plaintiff thereafter were either in the presence of one or both of her stepmother and biological father. (DHHR Client Contact Reports).
42. Later, on February 24, 2011, DHHR spoke with a Cabell County Assistant Prosecuting Attorney, who "was concerned about getting a tissue sample from the fetus in order to rule out the father as the maltreater." (DHHR Client Contact Reports). Later, on or about March 2, 2011, the Cabell County Assistant Prosecuting Attorney again contacted DHHR about

obtaining a DNA sample from the out-of-state doctor for which the stepmother indicated they would be going for an abortion, and the next day, the Assistant Prosecutor advised she would do the proposed Order for the Court. (DHHR Client Contact Reports).

43. On February 25, 2011, DHHR noted: "New referral received on 2/25/11 stating: ? [sic] Reporter states that a parent claiming to be a neighbor of . . . [Plaintiff's] reported last Wednesday that . . . [Plaintiff] is 14 weeks pregnant and her father . . . is supposedly the father of her child." (Defendant's records indicate that there is a "FACTS note regarding new referral received on 2/25/11," but that document has not been provided to Plaintiff.) (DHHR Client Contact Reports).
44. On March 1, 2011, unbeknownst to any of the authorities and in an attempt to destroy evidence in the criminal investigation of Plaintiff's biological father, Plaintiff's stepmother and a friend secretly transported Plaintiff to Kanawha County for an abortion.
45. On March 3, 2011, Mary Hendershot called DHHR and though Plaintiff was now saying it was the "boy in the neighborhood", Ms. Hendershot told DHHR she was concerned when Plaintiff started "saying things about her sleeping with her father in his bed and such." (DHHR Client Contact Reports).
46. In March of 2011, the Cabell County Assistant Prosecuting Attorney contacted the State Police. State Police records indicate:

"On Friday, 03/04/11, at approximately 1130 hours this officer received an investigation from Cabell County Assistant Prosecutor, Margaret Phipps Brown. The complaint involves a twelve (12) year of age female that became impregnated at the age of eleven (11). This officer was advised that the female, . . . made a statement that her father . . . had gotten her pregnant then recanted and stated that some boy she met at the skating rink had 'done it'.

This officer was advised to contact Cabell County Department of Health and Human Resources worker . . . for additional information.

On the same date this officer received via fax a State of West Virginia Department of Health and Human Resources Bureau for Children and Families report. This report contains a social summary from [DHHR's] Roger Justice that describes a referral where . . . [the stepmother was told Plaintiff was pregnant by her biological father]. It was reported that . . . [the stepmother] went to the victim's school and reported to the principal that the victim was pregnant but the father was currently unknown. [The stepmother] . . . also stated that . . . [Plaintiff] was to leave school on Thursday for an abortion at Women and Children's Hospital in Charleston and that she would be back on school on Friday. [The stepmother] . . . allegedly reported that the victim had requested an abortion and that 'if she could lie down and spread her legs for that, she can lie down for this.'

(State Police Notes 9 of 181; *see also* DHHR Client Contact Reports).

47. On March 7, 2011, Trooper Moore of the West Virginia State Police contacted a DHHR supervisor.
48. Shortly thereafter on March 7, 2011, DHHR appears to employ a second, different "worker" or case agent on Plaintiff's matter.
49. State Police records further state:

"On Monday, 03/07/11, this officer did receive via e-mail, a Referral for Child Protective Services West Virginia Child Protective Services System Intake Worksheet dated 02/23/11 and prepared by Crystal Weible. This Intake Worksheet provides this officer with the referral information on . . . [stepmother, father, and Plaintiff]. In this referral a reporter states that stepmother was told that . . . [Plaintiff] was pregnant by her husband and [Plaintiff's biological] . . . father . . . And that [her biological father and Plaintiff] had sex in their bed . . . and 'that she liked it, wanted to do it again' and described sexual positions. Reporter states that child was sexually inappropriate when she began living with the family and that she was trying to split them up. [Plaintiff] . . . denied saying this and stated that she was pregnant by a 'boy at the skating rink'. And one time [Plaintiff] . . . said that the 'baby is dad's', that 'when mom would go to work, they would start out on the couch wrestling and then one or the other would go the bedroom and he would use his 'thingy dingy' (penis). The father . . . stated he had woke up at times and [Plaintiff] . . . was at the foot of the bed and he told her to go

back to her room. When asked ‘are you telling me you had sex with her’, he stated ‘that he sleeps so heavily that he doesn’t know.’

(State Police Records 11 of 181).

50. In the police interview with the biological father on March 8, 2011, he said “when the case worker asked him about it [the pregnancy] he told her he didn’t see how it was him. This officer stated, ‘okay, let me, I don’t understand that, you don’t see how it was you?’” Later, in that same interview, the biological father admitted to having sexually inappropriate contact with Plaintiff. (State Police Records 14 of 181)
51. In the police interview with the stepmother on March 8, 2011, it was documented that after being asked who the father of the child was by the stepmother and the stepmother’s mother, Plaintiff “kept crying and she said well it was my daddy. [The stepmother] . . . stated she then asked . . . [Plaintiff] ‘ what do you mean it was your daddy’ and . . . [Plaintiff] said ‘well my daddy did it.’” (State Police Records 17 of 181). During this interview, that stepmother claimed to law enforcement that Plaintiff tried to touch her biological father inappropriately.
52. A report, dated March 8, 2011, from an Individual Therapy session at Prestera, states that the Plaintiff “reports the doctor told her she probably lost the baby. [Plaintiff] . . . reports she said her dad was responsible so that the attention would be taken off of her. However, she could not clarify how she thought that this would alleviate the pressure on her. [Plaintiff] . . . is now stating that she snuck out of the house in the afternoon when her dad was sleeping, met with a boy she had met once in the skating rink, and had sex with him.”
53. On March 9, 2011, DHHR spoke with Prestera’s Mary Hendershot in which it was recorded that “Mary doesn’t know what or who to believe and was hoping to find answers with the Departments [sic] help.” (DHHR Client Contact Reports).

54. DHHR's records indicate that in its phone call with Trooper Moore on March 11, 2011, Moore relayed the following: "She said all went well but there was one concern that made her feel uneasy. She explained during the interview she asked . . . [stepmother] point blank if she thought . . . [the biological father] could have sex with . . . [Plaintiff] and said . . . [stepmother] thought about it for a minute and asked if she thought . . . [Plaintiff] could have sex with . . . [biological father]. Trooper Moore said the name change made her wonder for a moment but she said well just answer best you can and . . . [stepmother] replied with 'anything's possible I guess.'" (DHHR Client Contact Reports).
55. In February-March of 2011, Plaintiff's biological father offered to DHHR to submit to a DNA or lie detector test. (DHHR Client Contact Reports). However, those were not done.
56. A Prestera report, dated March 14, 2011, states that Plaintiff "had initially accused dad, then recanted and gave the description of a neighborhood boy. [T]here is a court order for DnC - but she has already passed everything. Not supposed to meet or have any contact with dad."
57. Following the secret abortion, Plaintiff's stepmother took Plaintiff to her regular OB, representing that Plaintiff had miscarried. Thereafter, on March 16, 2011, Plaintiff underwent the surgical procedure known as dilation and curettage (D&C), involving general anesthesia.
58. On March 24, 2011, two DHHR personnel "discussed the impending [*sic*] of violence and . . . both felt that this is still an issue" at Plaintiff's home. (DHHR Client Contact Reports). Regarding in home services, one DHHR employee noted this "would help to assure the [*sic*] child's [*sic*] safety by their being a quick response when things get heated so that there would not be the [*sic*] violence". (DHHR Client Contact Reports).

Defendants sent her back to live with her biological father after Plaintiff said that her biological father raped and impregnated her.

59. Five minutes after the aforementioned call between two DHHR employees mentioned above noting the potential for violence on March 24, 2011, the DHHR worker “was instructed the family should and is able to return home[.]” (DHHR Client Contact Reports). Despite requesting them, Plaintiff has not been provided the records that should accompany such an important decision.
60. On March 28, 2011, Mary Hendershot called DHHR, and DHHR’s notes reflect the following exchange:

“Worker asked Mary about what had happened and she said that initially, she stated [sic] is was some random boy; the pregnancy was reported and Parents called Mary that evening and . . . [Plaintiff] was making allegations he (dad) was the one to have sex. [Stepmother and biological father] stated ‘They want her out.’ The child allegedly recanted the story again. Mary reports that he Dad told her that this was all her [sic] fault and Mary reminded him that they wanted her [sic] out of the house. Mary believes . . . [stepmother] is really jealous of the child. Dad did admit that . . . [Plaintiff] acted inappropriately and touched his private area. He said that nothing could have happened and then later said I sleep very heavy and at times she is at the foot of the bed. Allegedly his wife was [sic] a work. [Stepmother] . . . spanked her with belt then shoved her allegedly.”

(DHHR Client Contact Reports).

61. A Prestera note, dated March 31, 2011, documents that Plaintiff “is back in the home since making allegations against her father.” Similarly, another Prestera record, dated April 12, 2011, notes: “Custody now with father, back to living with dad.” (Prestera Medical Services Note).
62. In both the interview of the stepmother and the biological father on April 25, 2011, DHHR again noted that the biological father has “anger issues.” (DHHR Client Contact Reports).

63. Despite the horrific allegations made by the then 12 year-old Plaintiff (and though she later recants), Defendant nevertheless allowed her to live with her biological father.
64. Putting Plaintiff back in the home of the biological father who raped and impregnated her understandably had a devastating impact on her.
65. Further, Plaintiff continued to suffer repeated abuse at the hands of her biological father during that time period between March and October 2011.
66. On May 8, 2011, the State Police interviewed Plaintiff's biological father again. (State Police Records 21-25 of 181). During the interview, Plaintiff's biological father seemed to suggest that the sex he had with his daughter was somehow accidental and may be something that he slept through, but this was obviously false. The report of the interview notes at one point: "This officer asked . . . [him] 'well, is there any way sex could have happened between . . . [Plaintiff] and you that morning, is there any way?' [The biological father] . . . stated, 'there, there's a chance, yes.'" (*Id.*).
67. Defendants nevertheless continued the placement of Plaintiff with her biological father.
68. A Prestera record, dated July 27, 2011, indicates "DHHR has not taken custody of her." (Prestera Medical Services Note)
69. In October of 2011, an informant and friend of Plaintiff's stepmother called the police and advised the police about the secret March 2011 abortion (unbeknownst to the authorities) and other critical information for the criminal cases against Plaintiff's biological father and stepmother.

70. In October 2011, Plaintiff's biological father saw his wife (Plaintiff's stepmother) get arrested, and at that time, he transported Plaintiff to Ohio and dropped her at her sister's grandmother's house.
71. On October 21, 2011, Plaintiff's biological father is arrested for the first time.

Plaintiff's Fear and Reluctance to Speak Out

72. Plaintiff's biological father made clear to Plaintiff that she was not to say anything about the sexual contact he had with her beginning in 2010.
73. As indicated above, Plaintiff's biological father told Plaintiff that if she told the truth about the rapes and sexual assaults, that he would harm or kill her and her sisters. In February 2011, after finding out that Plaintiff had told the stepmother and Prestera that he was the father of Plaintiff's child, Plaintiff's biological father told the 12 year old Plaintiff to get her stuff and move out. Next, he put a knife to one of her stuffed animals and made a slashing motion and otherwise pretended to disembowel it down the middle of its breast and further told Plaintiff that "this is what's going to happen" to her and her family [*i.e.*, sisters], if she told anybody about the truth of what happened relating to the rapes and sexual assaults committed by him.
74. During this time after the 12 year old Plaintiff was sent back to live with her biological father between March and October 2011, Plaintiff's biological father told her to keep quiet or she'd be back in the foster care system "or worse."
75. Plaintiff lived in profound fear of her biological father from the time she moved in with him in 2010 until he was finally incarcerated in April 2018.

76. The aforementioned threats made by Plaintiff's biological father precluded her from exercising her free will and legal rights.
77. As indicated above, following the call to the Police from the stepmother's friend, Plaintiff's biological father was arrested on October 21, 2011. However, Plaintiff's biological father was not detained for any meaningful period of time until after April of 2018.
78. In 2014, Plaintiff's biological father was re-arrested and again was not imprisoned.
79. In September 2015, Plaintiff's biological father entered a *Kennedy* plea for incest with a minor.
80. Again, during this time between 2010 and April 2018, Plaintiff's biological father was not incarcerated.
81. Plaintiff did not feel safe while her biological father was not in custody of the authorities.
82. Indeed, apparently, the reason the criminal prosecution against Plaintiff's biological father repeatedly stalled was because of the then minor Plaintiff's reluctance to confront her rapist-biological father.
83. During this time, Plaintiff had nightmares about her biological father attacking her.
84. The actions of Plaintiff's biological father placed Plaintiff under a great deal of constant and extreme duress, to the point where Plaintiff repeatedly and genuinely feared for her life and safety as well as the life and safety of her sisters.
85. These fears were well founded. As explained above, Plaintiff's biological father had domestic battery charges made against him in 2004 and while Plaintiff resided with him in January of 2011. Then, on April 24, 2018, the then girlfriend of Plaintiff's biological father (not the stepmother previously referred to in the complaint) was seen at a facility for sex

offenders with a black eye and later Plaintiff's biological father admitted to striking his then girlfriend in the face with his fist.

86. Finally, on April 25, 2018, her biological father was imprisoned.

Defendants' Legal Responsibilities Regarding the Placement of Children and Investigations into Allegations of Sexual Assault

87. The statutes and case law developed in child abuse and neglect cases outline the clearly established rights violated by the Defendants. The DHHR is the sole public agency responsible for receiving, investigating and coordinating the investigation of child abuse or neglect reports. *W.Va.Code § 49-6A-9 (2010-11)*.⁴ It was required to provide protective services to prevent further abuse of children and to monitor these services to ensure the safety of these children. *Id. § 49-6A-9(b)*. Its mandate was to protect abused children, not to distort the truth and recommend the return to an abusive family. *Id. § 49-6A-9(b)*.
88. Upon notification of suspected child abuse, Defendant DHHR was to commence or cause to be commenced a thorough investigation of the report and the child's environment and conduct a face-to-face interview with the children and a protection plan. *Id. § 49-6A-9(b)(3)*. It was required to conduct vigorous investigations and assessments of alleged cases of child abuse so that no child is left without assistance and to provide for the prompt and effective termination of parental rights in cases where there was a failure of the parents to reasonably utilize fair opportunities to end the abuse. *Id. § 49-6D-2*.

⁴Section 6A of Chapter 49 no longer exists as of the date of this filing in 2019. These legal requirements have largely been shifted to other sections. However, Plaintiff uses the form of the statute that was in place at the time of the misconduct in this case.

89. Any child alleged to be abused could be delivered for ten days into the custody of the department if it found that an emergency existed including reasonable cause to believe that a child was or had been sexually abused or that his or her health and welfare was threatened. *Id.* §§ 49-1-3 and 49-6-5. Parental rights could be terminated upon a finding of sexual abuse. At the very least, state law required that upon a finding that a parent is unwilling to provide for the child's needs that the child be committed temporarily to the custody of the department. *Id.* § 49-6-5.
90. Defendant DHHR was required to respond immediately to all allegations of imminent danger or of serious physical abuse with a face-to-face interview within 72 hours with the child and the development of a protection plan. *Id.* § 49-6A-9(b)(4). Imminent danger includes situations when there is reasonable cause to believe that any child in the home is or has been sexually abused or not given adequate treatment of a serious illness or disease. *Id.* § 49-1-3. Additionally, in those cases in which the best interest of a child requires court action, it should have initiated legal proceedings. *Id.* § 49-6A-9(c). Defendants were responsible for providing, directing or coordinating the appropriate and timely delivery of services to any child suspected or known to be abused or neglected, including services to the child's family and those responsible for the child's care. *Id.* § 49-6A-9(d). All of these statutes, as well as the cases implementing this statutory scheme, outline the contours of the clearly-established law violated by the individual Defendants.
91. To largely reiterate, Defendants were statutorily charged with the following duties in 2011-2012:

- (1) The Department shall establish or designate in every county a local child protective service to perform the duties and functions set forth in this article. *Id.* § 49-6A-9(a).
- (2) The child protective service shall be the sole public agency responsible for receiving, investigating or arranging for investigation and coordinating the investigation of all reports of child abuse or neglect. *Id.* § 49-6A-9(b).
- (3) The Department shall provide services to prevent further abused or neglect of children and provide for or arrange for and coordinate and monitor the provision of those services necessary to ensure the safety of children. *Id.* § 49-6A-9(b).
- (4) The local child protective services office shall investigate reports of child abuse or neglect. *Id.* § 49-6A-9(b).
- (5) The local child protective service shall maximize the continuity of responsibility, care and service of individual workers for individual children and families. *Id.* § 49-6A-9(b).
- (6) Each local child protective service shall receive or arrange for the receipt of all reports of children known or suspected to be abused or neglected on a twenty-four hour, seven-day-a-week basis. *Id.* § 49-6A-9(b)(1).
- (7) Each local child protective service shall provide or arrange for emergency children's services to be available at all times. *Id.* § 49-6A-9(b)(2).
- (8) Each local child protective service shall upon notification of suspected child abuse or neglect, commence or cause to commence a thorough investigation of the report and the child's environment. *Id.* § 49-6A-9(b)(3).
- (9) Within 14 days there shall be a face-to-face interview with the child and the development of protection plan, if necessary for the safety or health of the child. *Id.* § 49-6A-9(b)(3).

(10) Each local child protective service shall respond immediately to all allegations of imminent danger to the physical well-being of the child or of serious physical abuse and within 72 hours a face-to-face with the child and development of a protection plan. *Id.* §49-6A-9(b)(4).

(11) Each local child protective service shall initiate the appropriate legal proceeding. *Id.* § 49-6A-9(c).

(12) Each local child protective service shall be responsible for providing, directing or coordinating the appropriate and timely delivery of services to any child suspected or known to be abused or neglected, including services to the child's family and those responsible for the child's care. *Id.* § 49-6A-9(d).

92. Defendant DHHR's Bureau for Children and Families's home page currently states as follows:

“What are the responsibilities of Child Welfare Services?

- *investigate reports of abuse and neglect of children*
- provide services to children and families in their home
- *place children in foster care if they are unsafe in their own homes or the community is not safe for them*
- finding permanent homes for children who cannot return to their own homes
- provide services to children transitioning into adulthood while in foster care placement”

(<https://dhhr.wv.gov/bcf/Services/Pages/Child-Protective-Services.aspx>) (emphasis added).

93. Despite the facts that, *inter alia*, (1) outside of his presence the then 12 year old Plaintiff had come forward and accused her biological father of raping and impregnating her; (2) Plaintiff's biological father's admissions that he sometimes woke up to the Plaintiff at the foot of his bed, that he sleeps so soundly that he didn't know whether he could have been impregnated his daughter; and that he had inappropriate sexual contact with her on other occasions; (3) Plaintiff's stepmother's statement that "anything is possible" in response to a question about whether the biological father could have impregnated Plaintiff, (4) the Prestera therapist's statement that the biological father and stepmother were "sounding more guilty and hiding more as the day goes on" immediately after the initial report, (5) Plaintiff's biological father had a history of violence and abuse known to the DHHR (and referred to in the records in late- March 2011 when the decision was made regarding placement), including multiple Domestic Battery charges with different women, (6) Plaintiff's biological father had been a victim of abuse as a child and his father is in prison for child molestation charges, (7) Plaintiff's original recantation was in the presence of her biological father and stepmother after they advised her and DHHR they no longer wished for the 12 year-old Plaintiff to live with them, (8) Plaintiff's alternate story that it was a "boy" who impregnated her changed from a boy at the skating rink to a boy in the neighborhood, and (9) DHHR failed to find or identify the "boy" who supposedly impregnated Plaintiff, Defendants nevertheless placed Plaintiff into the custody of her biological father between late-March of 2011 and October of 2011.

94. Defendants put Plaintiff back into the custody of her biological father without (a) further confirming DNA evidence or (b) conducting a lie detector test into the allegation that her biological father had raped, impregnated, and otherwise sexually abused her.

Defendant's Special Relationship

95. Defendants through promises and actions had an affirmative duty to act on behalf of the Plaintiff inasmuch as it placed the Plaintiff with her biological father and continued with the matter as described above.
96. Defendants knew that their actions and inactions described above would harm Plaintiff.
97. Defendants were in direct contact with Plaintiff as described above.
98. As then a minor child, Plaintiff justifiably relied on Defendants to protect her, but unfortunately, they failed.

Claims:

(COUNT I – ORDINARY & GROSS NEGLIGENCE & RECKLESS MISCONDUCT)

99. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.
100. Defendants owed a duty to Plaintiff.
101. Defendants breached this duty and were ordinarily, grossly negligent and otherwise reckless by, *inter alia*, (a) failing to do an appropriate investigation and background check prior to placing Plaintiff in 2010 into the custody of her recently-discovered biological father, who had a troubled history of abuse; (b) failing to immediately remove then 12 year-old Plaintiff from the dangerous situation after her biological father was temporarily removed from the home for Domestic Battery in January 2011; (c) placing the then 12 year old in the care of

her stepmother whose allegiance was plainly to Plaintiff's biological father immediately following the allegation that Plaintiff's biological father raped and impregnated her; (d) failing to immediately and completely remove then 12 year-old Plaintiff from the dangerous situation after Plaintiff came forward in February 2011 and advised the appropriate people that her biological father had raped and impregnated her; and (e) by sending Plaintiff back to live with her biological father in March of 2011 after Plaintiff previously stated that her father had raped and impregnated her.

102. Moreover, Defendants failed to properly train its agents and employees. Defendants were aware that without proper training and supervision that minors under DHHR's care such as Plaintiff faced danger to their physical and emotional well being.
103. Defendants' aforesaid misconduct violated the clearly-established law and regulations governing DHHR.
104. Plaintiff suffered damages proximately caused by Defendant's negligence, including but not limited to being subjected to rape by her biological father, sexual assault by her biological father, involuntary pregnancy by her biological father, forced abortion by her stepmother and biological father, an unnecessary D&C, additional abuse and threats by her stepmother and biological father, PTSD, and all other trauma caused by the aforementioned events and the re-living of such events after being placed back into the home after she had previously experienced these aforementioned events and reported them.
105. The aforesaid actions of Defendants were not taken in good faith, were in violation of clearly established law, and were fraudulent, malicious, or otherwise oppressive.

(COUNT II - STATE CONSTITUTIONAL TORT)

106. Plaintiff hereby incorporates by reference all other allegations in the Complaint.
107. Plaintiff is not making a claim under the United States Constitution or any federal statute.
Rather, she proceeds solely under the West Virginia Constitution.
108. Through their actions, Defendants created a situation where Plaintiff was placed in danger.
109. Defendants' actions created or substantially enhanced the risk that Plaintiff would be harmed.
110. Article 3, Section 10 of the West Virginia Constitution guarantees Plaintiff the substantive right to be free from and/or protected from harm, to receive adequate and appropriate services, programs, care and treatment from Defendants.
111. Article 3, Section 17 of the West Virginia Constitution guarantees Plaintiff equal protection of the law.
112. Article 3, Section 3 of the West Virginia Constitution guarantees that “[g]overnment is instituted for the common benefit, protection and security of the people . . .”
113. Defendants violated these State Constitutional provisions, among other things, thereby causing Plaintiff harm for which a recovery exists, as explained, for example, in *Hutchison v. City of Huntington*, 198 W.Va. 139 (1996).
114. The aforesaid actions of Defendants were not taken in good faith, were in violation of clearly established law, and were fraudulent, malicious, or otherwise oppressive.

WHEREFORE, Plaintiff demands judgment against the Defendants in an amount to fully and fairly compensate her for damages, including medical bills, economic and non-economic damages, court costs, attorney fees and such further relief as the Court may deem appropriate. Plaintiff also reserves the right to demand judgment against the individual Defendants for *punitive damages* for reprehensible, willful, wanton, and malicious conduct that was in blatant and intentional disregard of the rights owed to the Plaintiff.

PLAINTIFF DEMANDS A TRIAL BY JURY.

JANE DOE, Plaintiff,
--By Counsel--



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